

STATEMENT OF THE CASE

1. The Plaintiffs bring this civil action pursuant to the Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 to -23.24, and the common law, for reimbursement of the cleanup and removal costs they have incurred, and will incur, as a result of the discharge of hazardous substances at the SICO Direct #22 site in the City of Millville, Cumberland County. The costs and damages the Plaintiffs seek include the damages they have incurred, and will incur, for any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the SICO Direct #22 site. Further, the Plaintiffs seek an order compelling the Defendants to perform, under plaintiff DEP's oversight, or to fund DEP's performance of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the SICO Direct #22 site.

THE PARTIES

2. Plaintiff DEP is a principal department within the Executive Branch of the State government, vested with the authority to conserve and protect natural resources, protect the environment, prevent pollution, and protect the public health and safety. N.J.S.A. 13:1D-9.

3. In addition, the State is the trustee, for the benefit of its citizens, of all natural resources within its jurisdiction, for

which plaintiff DEP is vested with the authority to protect this public trust and to seek compensation for injuries to the natural resources of this State. N.J.S.A. 58:10-23.11a.

4. Plaintiff Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("the Spill Fund"). N.J.S.A. 58:10-23.11j. As chief executive officer of the Spill Fund, plaintiff Administrator is authorized to approve and pay any cleanup and removal costs plaintiff DEP incurs, N.J.S.A. 58:10-23.11f. c. and d., and to certify the amount of any claim to be paid from the Spill Fund, N.J.S.A. 58:10-23.11j.d.

5. Defendant The SICO Corporation ("SICO") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 15 Mount Joy Street, Mount Joy, Pennsylvania.

6. Defendant Miles Lerman is an individual whose dwelling or usual place of abode is 1450 Chestnut Avenue, Building 1, Suite A, Vineland, New Jersey 08361.

AFFECTED NATURAL RESOURCE

Ground Water

7. Ground water is an extremely important natural resource for the people of New Jersey, supplying more than 900 million gallons of water per day, which provides more than half of New Jersey's population with drinking water.

8. Not only does ground water serve as a source of potable water, it also serves as an integral part of the State's ecosystem.

9. Ground water provides base flow to streams and other surface water bodies, and influences surface water quality and wetland ecology and the health of aquatic ecosystems.

10. Ground water provides cycling and nutrient movement, prevents salt water intrusion, provides ground stabilization, prevents sinkholes, and provides maintenance of critical water levels in freshwater wetlands.

11. Ground water is a unique resource that supports the State's tourism industry, and is also used for commercial, industrial and agricultural purposes, all of which help sustain the State's economy.

12. There are more than 6,000 contaminated sites in New Jersey confirmed as having groundwater contaminated with hazardous substances.

GENERAL ALLEGATIONS

13. The SICO Direct #22 site consists of approximately 1.8 acres of real property located at 2110 N. Delsea Drive aka Route 47, City of Millville, Cumberland County, this property being also known and designated as Block 228, Lot 16, on the Tax Map of the City of Millville ("the SICO Direct #22 Property"), and all other areas where any hazardous substance discharged there has become

located (collectively, "the Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 010437.

14. From May 19, 1984, through the present, defendant Miles Lerman has owned the SICO Direct #22 Property, during which time "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., have been "discharged" there within the meaning of N.J.S.A. 58:10-23.11b., which substances included benzene, ethyl-benzene, toluene, xylenes, ("BTEX"), Methyl Tertiary Butyl Ether ("MTBE") and lead.

15. From 1984 through 2002, defendant SICO operated a gas station at the SICO Direct #22 Property, the operation of which involved the storage and dispensing of "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., certain of which were "discharged" there within the meaning of N.J.S.A. 58:10-23.11b., which substances included benzene, ethyl-benzene, toluene, xylenes BTEX, MTBE and lead.

16. In September 1991, defendant SICO installed four new underground storage tanks ("USTs") at the Site, and, in November 1991, installed three monitoring wells and began sampling the ground water from these wells.

17. By June 1993, defendant SICO had excavated, removed and disposed of approximately 17.7 tons of contaminated soils from the Site.

18. From May 1993 through March 1997, defendant SICO performed a remedial investigation pursuant to N.J.S.A. 58:10-

23.11f.a. and N.J.A.C. 7:26E, during which defendant SICO investigated the nature and extent of the contamination at the Site.

19. Sampling results from the remedial investigation revealed the presence of various hazardous substances at concentrations exceeding plaintiff DEP's cleanup criteria in the ground water and soil at the Site, which substances included BTEX, MTBE and lead.

20. On April 29, 1997, plaintiff DEP approved a Remedial Action Selection Report for the Site pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E-5.2, which described the proposed remedial action and how plaintiff DEP determined the proposed remedial action is the most appropriate alternative for the Site.

21. The remedial action plaintiff DEP approved for the Site primarily provides for soils removal and establishment of a Classification Exception Area ("CEA"), which excludes the designated ground water for use as a potable water source.

22. In 1997, SICO submitted a Remedial Action Workplan to plaintiff DEP and began a groundwater monitoring program.

23. In July 2002, defendant SICO initiated a long-term soil vapor extraction pilot test in response to sampling results that showed contaminant concentrations exceeding plaintiff DEP's cleanup criteria in the ground water at the Site.

24. Although defendant SICO has initiated the remedial investigation and remedial action for the Site, the groundwater and soils contamination continues.

FIRST COUNT

Spill Act

25. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 24, above, as though fully set forth in its entirety herein.

26. Each defendant is a "person" within the meaning of N.J.S.A. 58:10-23.11b.

27. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the SICO Direct #22 Property.

28. Plaintiff Administrator has certified, or may certify, for payment, valid claims made against the Spill Fund concerning the Site, and, further, has approved, or may approve, other appropriations for the Site.

29. The Plaintiffs have incurred, and will continue to incur, costs and damages, including lost value and reasonable assessment costs, for any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the SICO Direct #22 Property.

30. The costs and damages the Plaintiffs have incurred, and will incur, for the Site are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

31. Defendant SICO is the discharger of hazardous substances at the SICO Direct #22 Property, and is liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the SICO Direct #22 Property. N.J.S.A. 58:10-23.11g.c.(1).

32. Defendant Miles Lerman, as the owner of the SICO Direct #22 Property at the time hazardous substances were discharged there, is a person in any way responsible for the discharged hazardous substances, and is liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the SICO Direct #22 Property. N.J.S.A. 58:10-23.11g.c.(1).

33. Pursuant to N.J.S.A. 58:10-23.11u.a.(1)(a) and N.J.S.A. 58:10-23.11u.b., plaintiff DEP may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10-23.11u.b.(1); for its unreimbursed investigation, cleanup and removal costs, including the reasonable costs of preparing and successfully litigating the action, N.J.S.A. 58:10-23.11u.b.(2); natural resource restoration and replacement costs, N.J.S.A. 58:10-23.11u.b.(4); and for any other unreimbursed costs or damages plaintiff DEP incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

34. Pursuant to N.J.S.A. 58:10-23.11q., plaintiff Administrator is authorized to bring an action in the Superior Court for any unreimbursed costs or damages paid from the Spill Fund.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the SICO Direct #22 Property, with applicable interest;

- b. Enter declaratory judgment against the Defendants, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the SICO Direct #22 Property;
- c. Enter judgment against defendant SICO, jointly and severally, compelling Defendant SICO to continue to perform, under plaintiff DEP's oversight, any further cleanup of hazardous substances discharged at the SICO Direct #22 Property;
- d. Enter judgment against the Defendants, jointly and severally, without regard to fault, compelling the Defendants to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharge of hazardous substances at the SICO Direct #22 Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured as a result of the discharge of hazardous substances at the SICO Direct #22 Property;
- e. Award the Plaintiffs their costs and fees in this action;
and

f. Award the Plaintiffs such other relief as this Court deems appropriate.

SECOND COUNT

Public Nuisance

35. Plaintiffs repeat each allegation of Paragraphs 1 through 34 above as though fully set forth in its entirety herein.

36. Ground water is a natural resource of the State held in trust by the State for the benefit of the public.

37. The use, enjoyment and existence of uncontaminated natural resources are rights common to the general public.

38. The groundwater contamination at the Site constitutes a physical invasion of public property and an unreasonable and substantial interference, both actual and potential, with the exercise of the public's common right to this natural resource.

39. As long as the ground water remains contaminated due to the Defendants' conduct, the public nuisance continues.

40. Until the ground water is restored to its pre-injury quality, the Defendants are liable for the creation, and continued maintenance, of a public nuisance in contravention of the public's common right to clean ground water.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the SICO Direct #22 Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the SICO Direct #22 Property;
- c. Enter judgment against defendant SICO, compelling defendant SICO to abate, under plaintiff DEP's oversight, the nuisance by performing any further cleanup of hazardous substances discharged at the SICO Direct #22 Property;
- d. Enter judgment against the Defendants compelling the Defendants to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharge of hazardous substances at the SICO Direct #22 Property, by performing, under plaintiff DEP's oversight,

- or funding plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured as a result of the discharge of hazardous substances at the SICO Direct #22 Property;
- e. Award the Plaintiffs their costs and fees in this action; and
 - f. Award the Plaintiffs such other relief as this Court deems appropriate.

THIRD COUNT

Trespass

41. Plaintiffs repeat each allegation of Paragraphs 1 through 40 above as though fully set forth in its entirety herein.

42. Ground water is a natural resource of the State held in trust by the State for the benefit of the public.

43. Defendants are liable for trespass, and continued trespass, since hazardous substances were discharged at the SICO Direct #22 Property.

44. As long as the ground water remains contaminated, the Defendants' trespass continues.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages, including

- restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the SICO Direct #22 Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the SICO Direct #22 Property;
- c. Enter judgment against defendant SICO, compelling defendant SICO to cease, under plaintiff DEP's oversight, the trespass by performing any further cleanup of hazardous substances discharged at the SICO Direct #22 Property;
- d. Enter judgment against the Defendants, compelling the Defendants to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharge of hazardous substances at the SICO Direct #22 Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural

- resource injured as a result of the discharge of hazardous substances at the SICO Direct #22 Property;
- e. Award the Plaintiffs their costs and fees in this action; and
- f. Award the Plaintiffs such other relief as this Court deems appropriate.

ZULIMA V. FARBER
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: _____
Edward Devine
Deputy Attorney General

Dated:

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Edward Devine, Deputy Attorney General, is hereby designated as trial counsel for the Plaintiffs in this action.

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that the matters in controversy in this action are not the subject of any other pending or contemplated action in any court or arbitration proceeding known to the Plaintiffs at this time, nor is any non-party known to the Plaintiffs at this time who

should be joined in this action pursuant to R. 4:28, or who is subject to joinder pursuant to R. 4:29-1. If, however, any such non-party later becomes known to the Plaintiffs, an amended certification shall be filed and served on all other parties and with this Court in accordance with R. 4:5-1(b)(2).

ZULIMA V. FARBER
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Edward Devine
Edward Devine
Deputy Attorney General

Dated: 2/16/06

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